

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WILLIAM BRIDGE,

Plaintiff(s),

vs.

CREDIT ONE FINANCIAL,

Defendant(s).

Case No. 2:14-cv-01512-LDG-NJK

ORDER

(Docket No. 72)

Pending before the Court is Defendant's motion for an order authorizing Time Warner Cable to produce documents responsive to subpoena. Docket No. 72. Plaintiff filed a response and Defendant filed a reply. Docket Nos. 75, 81. The Court finds this matter properly resolved without oral argument. *See* Local Rule 78-2. For the reasons discussed below, Defendant's motion (Docket No. 72) is hereby **GRANTED**.

I. BACKGROUND

Plaintiff initiated this class action by filing a complaint against Defendant on September 17, 2014, alleging that Defendant violated the Telephone Consumer Protection Act, 47 U.S.C. § 2277, *et seq.* ("TCPA") by placing a large number of automated calls to Plaintiff's cellular telephone. Docket No. 1, ¶¶ 1-2. On June 26, 2015, Plaintiff filed an Amended Complaint, further alleging that Defendant violated the Nevada Deceptive Trade Practices Act, NEV. REV. STAT. § 41.600. Docket No. 95, at ¶ 1.

In its Answer, Defendant asserts that it obtained prior express consent for the telephone numbers at issue in this case. Docket No. 11, at 3. Specifically, Defendant contends that it obtained

consent from Plaintiff's mother, Nancy Bridge, to contact Ms. Bridge at the subject phone number. Docket No. 72, at 2 (asserting Ms. Bridge gave express consent for Defendant "to contact her at any phone number she provided to Credit One").

On March 3, 2015, Defendant issued a subpoena to non-party Time Warner Cable seeking, for the three year period prior to the filing of the Complaint, all incoming and outgoing call records, billing statements/records, and payment records for the subject phone number. *Id.*, at 11-16. On March 26, 2015, a representative from Time Warner Cable responded to the subpoena, stating that, as a cable TV provider, it would need court authorization to disclose personally identifiable information pursuant to the Cable Privacy Act, 47 U.S.C. § 551(c). *Id.*, at 18. Thereafter, Defendant filed the pending motion requesting the Court issue an order authorizing the disclosure of information sought in the subpoena to Time Warner Cable.

II. ANALYSIS

Rule 26¹ provides for the discovery of relevant, non-privileged information that "appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Relevance under Rule 26(b)(1) is liberally construed, and is considerably broader than relevance for trial purposes. *Oppenheimer Fund v. Sanders*, 437 U.S. 340, 351,(1978) (citation omitted); *U.S. E.E.O .C. v. Caesars Entertainment, Inc.*, 237 F.R.D. 428, 431-32 (D. Nev. 2006). For discovery purposes, relevance includes matters that bear on, or that reasonably could lead to other matters that bear on, any issue that is or may be in the case. *Oppenheimer Fund*, 437 U.S. at 351.

Pursuant to the Cable Privacy Act, a cable operator may disclose personally identifiable information concerning a subscriber if the disclosure is "made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed." 47 U.S.C. § 551(c)(2)(B). Defendant seeks such an order from the Court authorizing the release of subscriber and call record information from non-party Time Warner Cable.

Plaintiff opposes Defendant's motion, arguing that the documents sought in the subpoena are not relevant. Docket No. 75. Plaintiff asserts that the subject phone number belongs to Plaintiff's

¹ Unless otherwise specified, references to "Rules" refer to the Federal Rules of Civil Procedure.

1 mother, Nancy Bridge, which is the target of Defendant's request for leave to file a third-party
2 complaint. *Id.*, at 3; Docket No. 30 (motion for leave to file third-party complaint).

3 In reply, Defendant argues that Ms. Bridge authorized Defendant "to call Plaintiff's phone
4 number when she attached the number to her account, at least in part because of the familial,
5 financial, and other relationship between Plaintiff and Ms. Bridge." Docket No. 81, at 3.
6 Additionally, Defendant argues that the information sought in the subpoena is "directly relevant
7 material and material likely to lead to the discovery of admissible evidence." *Id.*, at 3.

8 The Court finds that the release of subscriber information from non-party Time Warner Cable
9 is central to establishing Credit One's defenses in this case. Prior consent is an affirmative defense
10 to calls otherwise made in violation of the Telephone Consumer Protection Act. *See* 47 U.S.C.
11 § 227(b)(1)(A). Defendant bears the burden of proof in establishing that the subscriber provided
12 prior consent. *Grant v. Capital Mgmt. Servs., L.P.*, 449 F. App'x 598, 600 n. 1 (9th Cir. 2011).
13 Therefore, the incoming and outgoing call records, billing statements/records, and payment records
14 for the subject phone number associated with Ms. Bridge's account are relevant to addressing the
15 issue of whether Defendant received prior consent from Ms. Bridge to contact the subject phone
16 number. Accordingly, the Court hereby **GRANTS** Defendant's motion for an order authorizing
17 Time Warner Cable to produce documents responsive to subpoena (Docket No. 72).

18 **III. CONCLUSION**

19 For the reasons discussed above, Defendant's motion for an order authorizing Time Warner
20 Cable to produce documents responsive to subpoena (Docket No. 72) is hereby **GRANTED**. To
21 ensure compliance with the Telephone Consumer Protection Act, 47 U.S.C. § 2277, Time Warner
22 Cable shall serve a copy of the subpoena and a copy of this order to its subscriber prior to producing
23 documents responsive to the subpoena.

24 IT IS SO ORDERED.

25 DATED: June 30, 2015

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NANCY J. KOPPE
United States Magistrate Judge